

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

FREDERICK R. CROFFER,

Defendant.

CASE NO. 8:08CR439

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 175). The government filed a statement of position (Filing No. 185). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant's objections are discussed below.

¶ 50 - § 3B1.2 (Role)

The Defendant argues that he is entitled to a 2-level reduction in offense level for having a minor role in the offense. The government states its position in ¶ 2 of its sentencing statement. However, the Court is unable to determine whether the government agrees to the reduction. The issue will be heard at sentencing, and the Defendant has the burden by a preponderance of the evidence.

¶ 81 - Alleged Gang Affiliation

The objection to the described information is denied for the reasons stated in the Addendum to the PSR and because this matter does not affect the sentencing guideline calculation.

IT IS ORDERED:

1. The Defendant's objection to ¶ 50 of the PSR will be heard at sentencing, and the objection to ¶ 81 is denied;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
3. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;
4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and
5. The Defendant's motion for downward departure (Filing No. 78) will be heard at sentencing.

DATED this 16th day of July, 2009.

BY THE COURT:

s/ Laurie Smith Camp
United States District Judge